CT-1007

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT

BILASPUR

WRIT PETITION NO. 1518 /2002

PETITIONER

S.BHARPOOR SINGH GREWAL AGED ABOUT 70 YEARS, SON OF LATE SHRI KARTAR SINGH GREWAL, RESIDENT OF B-23, JASPREET AUTOMOBILES, NEW BOMBAY MARKET, RAIPUR (CHHATTISGARH)

P.R. No. 1521/02
Presented by Bharpoor Singh
dated 27/07/02

VERSUS

RESPONDENTS

1) STATE OF CHHATTISGARH THROUGH : SECRETARY (REVENUE), D.K.S. BHAWAN, RAIPUR (CHHATTISGARH)

2) COMMISSIONER (REVENUE) BASTAR DIVISION, BASTAR AT JAGDALPUR (C.G.)

3) COMMISSIONER (REVENUE), RAIPUR DIVISION, RAIPUR (CHHATTISGARH)

4) COLLECTOR BASTAR, DISTT. BASTAR, JAGDALPUR (CG)

5) TAHSILDAR JAGDALPUR, DISTT. BASTAR (C.G.)

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS, PROHIBITION AND CERTIORARI...ETC.

(126)

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 1518 OF 2002

S. Bharpoor Singh Grewal
Vs.

State of Chattisgarh & Others

O R D E R

Post for 27/4/2005

Sd/-
Fakhruddin
Judge

(187)

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 1518 OF 2002

S. Bharpoor Singh Grewal

Vs.

State of Chattisgarh & Others

Shri V.K. Pandey, counsel for the petitioner.

Shri Sanjay S. Agrawal, Government Advocate for the respondents.

Per Fakhruddin, J

O R D E R

Heard learned counsel for the parties.

2. By this petition under Articles 226/227 of the Constitution of India the petitioner challenges the order dated 16-7-2002 (Annexure-P/1) passed by the Commissioner.

3. Briefly stated facts of the case are that the petitioner is an Ex-Serviceman and his father Late Shri Kartar Singh Grewal was also an Ex-Serviceman. The petitioner and his father both were allotted 10 acres of land each bearing Khasra Nos.106/19, 107/17 and 106/18. This was allotted vide Annexure-P/4 to the petitioner and vide Annexure-P/5 to the petitioner's father. The lease was for five years with renewal clause. It is stated that possession was taken and after improving it was made cultivable. The petitioner and his

father cultivated the land. While they were cultivating the land, they applied for renewal and report of Revenue Officer was called for. The emergency was imposed on 26th June, 1975 and during this period the Collector took suo motu action. This action was taken after many years. The petitioner contends that he was arrested on 7-8-1975 and remained in jail till 25-8-1975, which is borne out from Annexure-P/6 herein and during that period notices were served. The order passed by the Collector in suo motu case relating to the land of the petitioner on 25.08.1975 is Annexure-P/7. When the petitioner came to know about that order he applied for certified copy of the said order but the same was not supplied to him. He approached various authorities and ultimately he approached M.P. State Minority Commission. The Minority Commission made a recommendation to the State Government. The petitioner approached the Revenue Commissioner who held that it has no jurisdiction under R.B.C., which is reflected from order Annexure-P/8. The petitioner then filed a writ petition bearing W.P.No.1310/2001, which came up for hearing before this Court on 11.12.2001, and this Court passed an order as under :

> *"It is contended that the petitioner and his father who were Ex-servicemen were given land grants in 1968 (10 acres each). However, some time during the emergency period in 1975, while the writ petitioner was in jail, the lease in respect of the land came to be cancelled by respondent No.2. After the*

petitioner was released, he wanted to file an appeal and in this regard he requested for certified true copy of the order of cancellation. Unfortunately, no such copy was issued to him. At long last he approached M.P. State Minority Commission. As stated above a direction was issued for examining the matter on merit. As nothing has been done in accordance with the directions issued by the Minority Commission, the petitioner has approached this Court seeking necessary direction to be issued to the State authority to decide the matter on merit. Mr. Gautam Bhaduri, learned Govt. Advocate prays for time to file reply.

I am of the view that since some direction has already been issued, the State authority may examine the matter. In the mean time, it has been stated that the father of the petitioner died in December, 1975. In my view it will be fair that such matter is given priority.

In the result, this petition is disposed of with a direction that the case of the writ petitioner shall be decided by the Commissioner, Revenue, Bastar. The petitioner shall approach, Commissioner, Bastar by filing a representation within 15 days from today together with a copy of this order and on receipt of the same, the Commissioner, Revenue, Bastar, shall proceed to decide the matter after giving an opportunity of being heard to the writ petitioner within a further period of not later than three months."

4. Learned counsel for the petitioner submitted that in compliance of the order passed by this Court in W.P.No.1310/2001, the petitioner made a representation before the concerned authority, but the same was rejected. Hence the petitioner filed another writ petition before this Court bearing W.P.No.598/2002, which came up for hearing on 12.07.2002. This Court passed the following order:

"Subsequent thereto, the petitioner had submitted a representation before the Commissioner, Bastar Division, Bastar, who has disposed of the said representation on 26.02.2002. It has been

observed that as judicial order had already been passed by the Additional Commissioner, Raipur, he could not re-appreciate the matter. Thereafter, the petitioner has come before this Court by way of this petition.

It is stated by learned counsel for the State that during pendency of the writ petition, the Commissioner has initiated suo motu proceedings for review of his order and the petitioner has been heard on that question.

In this view of the matter, the petitioner is permitted to withdraw this writ petition with liberty to file afresh petition, if an occasion arises."

Thereafter vide order dated 16/7/02 the Commissioner while exercising powers under Sec. 51 of the Land Revenue Code, 1959 again rejected the representation of the petitioner.

5. From a perusal of the record, it appears that on 19.04.1968, the proceedings were started regarding allotment and the report from Patwari was called. On 26.4.1968 the Patwari submitted the report that 10 acres of land is available in the village for allotment and for that an application has been filed by Shri Bharpoor Singh, Ex. Serviceman/petitioner. On 28.6.1968 the Sarpanch and Patel of the village submitted the report that they have no objection in allotment of the said land to the petitioner. On 29.6.1968 the order was passed by the Tehsildar directing the Patwari for making demarcation and for preparation of the map. On 14/8/1968, the Tehsildar issued an order for assessment of premium. On 28.11.1968, the Additional Collector, Bastar District passed an order, which is relevant and quoted below:

"Order passed under Section 60 of the M.P.L.R. Code, 1959. The proposed by the rent proposed by the Tahsildar and verified

by the Supdt. Land Records, Jagdalpur is hereby confirmed.

Forwarded to the Tahsildar Jagdalpur for further action through the Sub Divisional Officer, Jagdalpur."

After the approval of the Additional Collector, the lease deed was entered into on 6-12-1968 (Annexure-P/4). The petitioner developed the land and cultivated continuously for seven years and acquired Bhoomiswami rights as per clause 14 of the patta. The matter was suo motu reviewed. It is contended that the suo motu review can be made by the authorities provided the Commissioner, Settlement Commissioner, Collector or Settlement Officer thinks it necessary to review any order which he has not himself passed, he shall first obtain the sanction of the Board and if an Officer subordinate to a Collector or Settlement Officer proposes to review any order, whether passed by himself or by any predecessor, he shall first obtain the sanction in writing of the authority to whom he is immediately subordinate. The Collector was not competent under Section 51(1) of the Land Revenue Code.

6. Section 51 of the Land Revenue Code, 1959 is pertinent and quoted below:

*"**51. Review of orders.**—(1) The Board and every Revenue Officer may, either on its/his own motion or on the application of any party interested review any order passed by itself/himself or by any of its/his predecessors in office and pass such order in reference thereto as it/he thinks fit.*

Provided that –

(i) If the Commissioner, Settlement Commissioner, Collector or Settlement Officer thinks it necessary to review any orde.· which he has not himself passed, he shall first obtain the sanction of the Board, and if an officer subordinate to a Collector or Settlement Officer proposes to review any order, whether passed by himself or by any predecessor, he shall first obtain the sanction in writing of the authority to whom he is immediately subordinate;

(i-a) no order shall be varied or reversed unless notice has been given to the parties interested to appear and be heard in support of such order;

(ii) no order from which an appeal has been made, or which is the subject of any revision proceedings shall, so long as such appeal or proceedings are pending be reviewed;

(iii) no order affecting any question of right between private persons shall be reviewed except on the application of a party to the proceedings, and no application for the review of such order shall be entertained unless it is made within ninety days from the passing of the order.

(2) No order shall be reviewed except on the grounds provided for in the Code of Civil Procedure, 1908 (V of 1908).

(3) For the purposes of this section the Collector shall be deemed to be the successor in office of any Revenue Officers who has left the district or who has ceased to exercise powers as a Revenue Officer and to whom there is no successor in the district.

(4) An order which has been dealt with in appeal or on revision shall not be reviewed by any Revenue Officer subordinate to the appellate or revisional authority.

7. Learned counsel for the petitioner placed reliance upon the decisions of High Court of Madhya Pradesh rendered in the case of ***Shiva Shankar Mandil vs. State of M.P. & Others*** reported in ***1996 RN 137*** (Para-13) and contended that the rights of Government lessee under Section 181 of the Land Revenue Code cannot be taken away by reviewing the order suo motu. Para 13 of the said judgment is pertinent and is quoted below:

> "***13.*** *Learned counsel for the petitioner appears to be right in his submission that after grant of lease under the registered document, the petitioner status would be that of a Government lessee as described in section 181(1) of the Code. The lease of a Government lessee is liable to termination on one of the grounds stated in sub-section (2) of section 182 of the Code, such an non-payment of rent, misuse of the land, expiry of its term or contravention of any term or condition of the grant. A valid lease granted under the Code cannot be set aside on any other ground. Permitting exercise of review powers for setting aside the lease would be in contravention of section 182 and violative of the rights of a Government lessee conferred under section 182 of the Code. The power of review conferred under section 51 of the Code, therefore cannot be exercised with the above oblique motive of setting aside a valid grant of lease of a land made to a Government lessee. The learned counsel for the petitioner is also right in relying on the decision cited on behalf of the petitioner that the power of review has to be exercised within a reasonable time and the period of three years is unreasonably long period to permit exercise of suo motu power of review under section 51 of the Code. Learned Single Judge of this Court in the case of Sardarsingh (supra) has placed reliance on a decision of the Supreme Court in a decision AIR 1969 SC 1297 State of Gujrat v. Radhey. The above decision of the Supreme Court as also other decisions cited on the subject lay down that the power of review has to be exercised within a reasonable time and the reasonable time depends upon the nature of right which is sought to be interfered with by the order to be passed in the*

review. Here, the land was granted for raising a factory. The petitioner obtained possession, paid premium, spent money for obtaining the registered lease-deed. He, thereafter, made initial expenditure for preparing the land for raising structure. The power of review, therefore, should have been exercised well before the petitioner, pursuant to the grant of lease in his favour made substantial expenditure and had incurred liabilities for setting up an industry as a means of his livelihood. The argument advanced on behalf of the Housing Board is not acceptable that since the matter was brought to the Court and was pending, the entire period spent in the Court should be given allowance for the purpose of determining the reasonable period. The petitioner had approached this Court against the order staying his construction. There were directions for maintaining status quo by the parties on the land. The Housing Board had raised objection to the allotment and nothing prevented the State from taking necessary steps within the reasonable time of three months. The exercise of power of review, is therefore, highly belated. An argument based on the doctrine of promissory estoppel was also advanced on behalf of the petitioner and some cases were cited, but I need not go into that aspect of the matter, since I find that the action of the respondents is otherwise not supportable in law."

8. In the instant case also, grant of lease is by the registered document and as such the status of the petitioner will be of Government lessee. The lease of the Government lessee can be terminated on the grounds contained under sub-section 2 of section 182 of the Code. The valid lease granted under the Code cannot be set aside on any other ground.

9. The other question is of power of review under Section 51 of the Code. Power of review also cannot be exercised with the oblique motive of setting aside a valid grant of lease of a

land made to a Government lessee. The power of review has to be exercised within a reasonable period. In the instant case, this has been done after lapse of many years. The Power of review also has to be exercised with the prior permission of the competent authority, which has not been done.

10. Learned counsel for the petitioner submits that all these proceedings were started but the petitioner was not heard, on the contrary when the notice was served he was detained in custody and released only on 25.08.1975 and after release, he came to know about the order dated 25.08.1975 passed by the Collector and he applied for certified copy of the order dated 25.8.1975 but the same was not supplied to him. It is contended that this is high handedness and remindful of those black days. It is further contended that this is not only violation of principles of natural justice but depriving the person's life and liberty in contravention of law. It is also contended that the orders passed by the Collector are in utter violation. The person was so scared. It is submitted that the Patta was granted in the year 1968, which could be renewed by the Additional Collector. The petitioner had applied for the renewal and the report of Revenue Officer was called for. The emergency was imposed and during this period the Collector took suo motu action. Paragraph 5 of order dated 16th July 2002 goes to show that the case was fixed for 25-8-1975 and on that date, the petitioner was required to file reply and to argue either personally or through counsel. Counsel

contended that it is evident from Annexure P-6 that the petitioner was in jail from 7-8-1975 to 25-8-1975 and on 25-8-1975 itself, the petitioner was released from jail, and therefore, he could not file reply as he had no opportunity to do so. There is great force in the contention and the contention could not be demolished. The order was passed without affording opportunity to the petitioner.

11. On perusal of the record, it appears that the Collector took suo motu action after a long lapse of time. Even the petitioner was not given any opportunity of hearing. The show cause notice was issued to him when he was detained in jail. The Apex Court in the case of ***Mohamad Kavi v. Fatmabai Ibrahim*** reported in ***1998 (1) M.P.W.N. 37 Note 26*** has held that suo motu powers of enquiry period of limitation not provided under statute and it should be started within a reasonable time and it is also held that even one year may be unreasonable period for the purpose. It has also been held that Section 50 provides that suo motu powers of revision may be exercised within reasonable time. The Apex Court also in the case of ***State of Gujarat v. Patil Raghav Natha and others*** reported in ***AIR 1969 SC 1297*** has held that the Commissioner must exercise his revisional powers within a few months of the order of the Collector.

12. The High Court of Madhya Pradesh, while dealing with the aforesaid two judgments of the Apex Court, in the case of

Ravi Narayan vs. State of M.P. and others reported in ***2000 RN 161*** has held that suo motu revisional powers should be exercised within reasonable time and even one year in a given case may be unreasonable. Even where no time limit is prescribed for exercise of a power under a statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time, as has been held by the Apex Court in its various judgments.

13. In view of the facts and circumstances of the case, material on record and the discussion made in the foregoing paragraphs, the petition is allowed. The order dated 16-7-2002 passed by respondent No.2 Commissioner (Revenue), Bastar Division, Bastar at Jagdalpur in revision No.4/B-121/2001-2002 and orders dated 25-8-1975 and 23-9-1975 passed by respondent No.4 Collector, Bastar are set aside.

14. Accordingly, the petition is allowed.

15. Counsel fee as per scale if certified.

Sd/-
Fakhruddin
Judge

27/**4/2005**

G/H/P